

Federal Acquisition Regulation

25.1001

(1) If the agency head, or designee, determines, with the concurrence of the Comptroller General, that waiver of the right to examination of records by the Comptroller General will serve the public interest; or

(2) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records, as defined at 4.703(a), available for examination, and the agency head, or designee, determines, after taking into account the price and availability of the property or services from United States sources, that waiver of the right to examination of records by the Comptroller General best serves the public interest.

(d) *Determination and findings.* The determination and findings shall—

(1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(2) Describe the efforts to include the basic clause;

(3) State the reasons for the contractor's refusal to include the basic clause;

(4) Describe the price and availability of the property or services from the United States and other sources; and

(5) Determine that it will serve the interest of the United States to use the clause with its Alternate III.

[54 FR 29281, July 11, 1989, as amended at 59 FR 11378, Mar. 10, 1994; 60 FR 42650, Aug. 16, 1995; 62 FR 259, Jan. 2, 1997; 62 FR 51271, Sept. 30, 1997]

25.902 Inconsistency between English version and translation of contract.

The contracting officer shall insert the clause at 52.225-14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts whenever translation into another language is anticipated.

Subpart 25.10—Implementation of Sanctions Against Countries That Discriminate Against United States Products or Services in Government Procurement

SOURCE: 58 FR 31142, May 28, 1993, unless otherwise noted.

25.1000 Scope of subpart.

This subpart implements sanctions imposed by the President (58 FR 31136, May 28, 1993) pursuant to section 305(g)(1) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(1)). These sanctions apply to countries that discriminate against U.S. products or services in Government procurement. This subpart does not apply to the Department of Defense. For thresholds that are unique to individual agencies (e.g., Power Marketing Administration of the Department of Energy), see agency regulations.

[62 FR 64930, Dec. 9, 1997]

25.1001 Definitions.

As used in this subpart—

Sanctioned European Union (EU) construction means construction to be performed in a sanctioned member state of the EU and the contract is awarded by a contracting activity located in the United States or its territories.

Sanctioned EU end product means an article that (a) is wholly the growth product or manufacture of a sanctioned member state of the EU or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that from which it was so transformed in a sanctioned member state of the EU. The term refers to a product offered for purchase under a supply

contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of these incidental services does not exceed that of the product itself.

Sanctioned EU services means services to be performed in a sanctioned member state of the EU when the contract is awarded by a contracting activity located in the United States or its territories.

Sanctioned member state of the EU means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom.

[60 FR 67517, Dec. 29, 1995]

25.1002 Trade sanctions.

(a) Subject to the exceptions in paragraph (b) of this section, executive agencies shall not award contracts for—

(1) Sanctioned EU end products with an estimated acquisition value less than \$186,000.

(2) Sanctioned EU construction with an estimated acquisition value less than \$7,143,000.

(3) Sanctioned EU services as follows:

(i) Service contracts with an estimated acquisition value less than \$186,000.

(ii) Regardless of dollar value, contracts for—

(A) All transportation services, including Launching Services (all V codes, J019, J998, J999, K019);

(B) Dredging (Y216, Z216);

(C) Management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development centers (all M codes);

(D) Development, production or co-production of program material for broadcasting, such as motion pictures (T006, T016);

(E) Research and development (all A codes);

(F) Airport concessions (S203);

(G) Legal services (R418);

(H) Hotel and restaurant services (S203);

(I) Placement and supply of personnel services (V241, V251);

(J) Investigation and security services (S206, S211, R423);

(K) Education and training services (all U codes, R419);

(L) Health and social services (all O codes, all G codes);

(M) Recreational, cultural, and sporting services (G003); and

(N) Telecommunications services (encompassing only voice telephony, telex, radio telephony, paging, and satellite services) (S1, D304, D305, D316, D317, D399).

(b) The sanctions in paragraph (a) of this section do not apply to the following:

(1) Purchases awarded by simplified procedures in accordance with Part 13.

(2) Total small business set asides under 19.502–2.

(3) Contracts in support of the U.S. national security interests.

(4) Contracts for goods or services awarded outside the United States and its territories where the goods or services are to be used outside the United States.

(5) Contracts for essential spare, repair, or replacement parts not otherwise available from non-sanctioned countries.

(c) *Authority to exempt certain procurements.* (1) The head of an agency, without power of redelegation, may authorize the award of a contract or class of contracts for sanctioned EU end products, services, and construction, the purchase of which is otherwise prohibited under paragraph (a) of this section if the agency head determines that such action is necessary—

(i) In the public interest;

(ii) To avoid the restriction of competition in a manner which would limit the procurement in question to, or would establish a preference for, the services, articles, materials, or supplies of a single manufacturer or supplier; or

(iii) Because there would be or are an insufficient number of potential or actual bidders to assure the procurement of services, articles, materials or supplies of requisite quality at competitive prices.

(2) When a determination is made according to this paragraph (c), the agency shall notify the United States Trade